IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR

J U D G M E N T

(Mohan Lal & Anr. Vs. Dwarka Prasad & Ors.)
S.B. Civil Regular First Appeal No. 123/2006

S.B. Civil Regular First Appeal under Section 96 read with Order 41 CPC against the Judgment and decree dated 30.1.2006 passed by Shri Bhagwan Sharma, RHJS, Additional District & Sessions Judge No.3, Jaipur City, Jaipur, by which the application filed by the defendant-respondents under the provisions of Order 7 Rule 1 CPC has been allowed and the Civil Suit No. 167/2005 filed by the plaintiff-appellants against the defendant-respondents has been dismissed

Date of Judgment : : February, 15th, 2007

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. G.P. Sharma)
Mr. R.K. Agarwal)
Mr. Parag Rastogi) for the appellants

Mr. G.K. Garg)
Mr. J.P. Goyal) for the respondents

REPORTABLE

BY THE COURT:

1. Two important questions of law arise for consideration in the present first appeal and on this arguments of not only learned counsel for the appellants and respondents were heard by this Court at length,

but besides that learned counsels appearing in other cases involving same question, also addressed the Court in the present appeal as amicus-curiae and they were heard at length.

The questions are-

1) "Whether after enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("Securitisation Act" for brief), with effect from 17.12.2002 which contains a bar against exercise of jurisdiction by Civil Courts in Section 34 of the said Act, whether the civil suit involving the banks and financial institutions who have taken measures U/s. 13 (4) of the aforesaid Act can be filed and whether the Civil Court in civil suits filed U/s. 9 of CPC can entertain such suits for deciding inter-se rights between third parties, including borrower of such banks and financial institutions and also impleading banks and financial institutions in such suit?"

2) "Whether the Civil Courts while dealing with such civil suits filed U/s. 9 CPC, can grant any injunction against the banks and financial institutions after they have initiated action U/s. 13 (4) of the Securitisation Act, 2002?"

2. The factual background giving rise to the present appeal in brief is as under:-

The present appellants Mohan Lal and Smt. Prem Bai claimed their right of pre-emption in respect of suit property and filed a suit for claiming their right of pre-emption on 10.9.1987 in the trial court with the case set up that one Radha Devi mortgaged the said property in favour of Shri Ram and Dwarka Prasad S/o Shri Ram on 10.9.1981, which was a conditional sale for a period of five years and when the said period of five years expired, the present appellants Mohal Lal and Prem Bai filed the suit for pre-emption, which came to be rejected by the trial court on 11.1.2001. The plaintiff-appellants Mohan Lal and Prem Bai came up in appeal before this Court namely First Appeal No. 127/2001, which is also pending in this Court. In the said appeal, an injunction came to be passed on 18.4.2003 directing both the parties to maintain the status-quo in respect of the property in question. However, before the said stay order was granted after two years of filing of the said appeal on 3.8.2002, the aforesaid mortgagee Dwarka Prasad sold the suit property to one Ghanshyam, who in-turn mortgaged the same to the defendant Bank-SBBJ, Jaipur on 2.9.2002 to obtain certain loan. A few days thereafter on 24.9.2005, the present plaintiff-appellants filed another suit in the trial court, which was a suit for declaration and permanent injunction on the basis of pre-emption rights claimed in the aforesaid separate suit, against which the connected appeal is pending in this Court. On 24.1.2006, the

defendant-Bank filed application before the trial court under Order 7 Rule 11 CPC saying that in view of bar of jurisdiction contained in Section 34 of the Securitisation Act, 2002, the present suit No. 167/2005 was not maintainable. The trial court after hearing the arguments accepted the said application under Order 7 Rule 11 CPC and dismissed the suit as not maintainable in view of bar of Section 34 of the Securitisation Act on 30.1.2006. This is the order impugned in the present appeal and has given rise to aforesaid two questions of law. For considering the said questions, it would be important to reproduce certain provisions of relevant statutes. Section 34 to Section 37 of the Securitisation Act are reproduced hereunder:-

> **"34. Civil court not to have jurisdiction**.-No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).
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> **35. The provisions of this Act to override other laws**.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
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> **36. Limitation**.-No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

> **37. Application of other laws not barred**.-The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

3. Since the main provisions of Section 34 of the said Act refers to "any matter" which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act (Securitisation Act) and the bar is against entertainment of any suit or proceedings, it would be necessary to refer to the provisions contained in Section 13, 17 and 19 of the said Act also.

> "**13. "Enforcement of security interest**.-(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.
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> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).
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> (3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets

intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

[(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under Section 17 A.]

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely;-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) of the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for

transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an

undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.-For the purposes of this sub-section,-

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorized in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."

17. "Right to appeal.-(1) ***Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4)*** of section 13 taken by the secured creditor or his authorised

officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.-For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules

made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]"

19. Right of borrower to receive compensation and costs in certain cases.-If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower shall

> be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B."

4. Learned counsels at bar also profusely referred the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (for short "RDB Act"). Since both the acts have been enacted with a purpose of expeditious adjudication and Recovery of Debts Due to Banks and Financial Institutions and for matters connected therewith or accidental thereto and these enactments in commercial litigation have given rise to multi-fold cases, it would be necessary to refer to some provisions of the said Act also.

5. Section 17 relating to jurisdiction, powers and authority of Tribunals, section 18 containing bar of jurisdiction and section 19 to the extent relevant, namely Section 19 (1) and Section 19 (2) are also reproduced hereunder.

> "**17. Jurisdiction, powers and authority of Tribunals**.-(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.
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> (2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

18. Bar of Jurisdiction.-On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

19. Application to the Tribunal.-(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

[Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal

refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recovery its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal."

6. Though certain rules namely Rule No. 7, 8 & 9 of the "Security Interest (Enforcement) Rules, 2002" framed under the Securitisation Act were also referred to, but it is not considered necessary to reproduce the same here, for the sake of brevity.

7. Advancing the arguments for the side of the appellants Mr. G.P. Sharma, Mr. R.K. Agarwal and Mr. Parag Rastogi, Advocates submitted that Section 34 of the Securitisation Act cannot bar the jurisdiction of the Civil Courts to decide the inter-se civil rights and in view of general permission to file civil suits for determination of civil rights given U/s. 9 of CPC, the aforesaid Section 34 cannot be construed as expressed or implied bar against such civil suits as far as inter-se civil rights of the parties are concerned. They relied on various judgments of various High Courts and Hon'ble Supreme Court, which would be discussed a little later, but Mr. G.K. Garg, learned counsel appearing for the defendant-respondent-Bank in the

present appeal did not lay much contest on this submission as such for the right of civil court to decide civil rights inter-se third parties, but he was emphatic against entertainment of any such suit or grant of injunction in respect of matters, for which the banks and financial institutions have initiated action U/s. 13 (4) of the Securitisation Act and submitted that no such suit can be entertained nor any injunction can be granted by any Civil Court after initiation of such steps by the banks and financial institutions in respect of matters covered by the domain and jurisdiction of banks and financial institutions U/s. 13 (4) of the Securitisation Act as well as Section 17 of the Debt Recovery Tribunal under R.D.B. Act, 1993

8. The question is where to draw the line?

The proposition that all inter-se civil rights of the parties can be decided only by the Civil Courts and not by the Tribunal created under R.D.B. Act or banks and financial institutions under the Securitisation Act, 2002, is the proposition, which does not present much difficulty. The said Tribunal or the authorities including the Banks and Financial Institutions cannot be termed as courts of law to decide the inter-se civil rights of the parties. But the twist of bar contained in Section 34 begins as soon as such determination of civil rights of third parties including the borrower start encroaching upon the right of the banks and financial institutions to proceed under these

two special enactments enacted with the special objective of expeditious and quick recovery of public money from the defaulting borrowers.

9. The over-riding effect given to Securitisation Act, 2002, which is undoubtedly a special law for special purpose with the non-obstante provisions contained in Section 13 on the principle of '***Generalia specialibus non derogant***' and bar of jurisdiction of Civil Courts in respect of matters falling within the domain of Tribunal or the measures contained in Section 13 (4) of the Act is undoubtedly meant to give effective powers to the banks and financial institutions and the Tribunal constituted under R.D.B. Act, which exercises powers under Securitisation Act also by virtue of Section 17 of the Act, which are given and are intended to be exercised with no interference of Civil Courts and the purpose is obvious that since the legal proceedings in Civil Courts usually takes long time, therefore, their jurisdiction is excluded by these provisions and the Tribunal or the banks and financial institutions themselves are given exclusive powers to decide the controversies arising in respect of the measures, which they can undertake to enforce the security and realize their debts. Even third parties other than borrowers have been given remedy in law to raise their objections before the Tribunal and such objections are to be decided by the Tribunal subject to further appeal

to the Appellate Tribunal as per Section 17 & 18 of the Securitisation Act, 2002. Section 17A of the Act lays down that application U/s. 17 shall be made to the Court of District Judge in the State of Jammu and Kashmir and against any order made by District Judge U/s. 17A appeal has been provided to the High Court of that State U/s. 18B of the Act. This for the present controversy is not very relevant and provisions of Section 17A and 18B are in pari-materia with Section 17 and 18, which provides for similar application to Tribunal and appeal to Appellate Tribunal. Section-19 provides for a further remedy in the cases where such Tribunal or Appellate Tribunal holds that the possession of the secured assets by the secured creditor is not in accordance with the provisions of this Act and Rules made thereunder and directs the secured creditors (banks and financial institutions) to return the such secured assets to the concerned borrowers, such borrowers shall be entitled to payment of such compensation and costs, as may be determined by the Tribunal or the Court.

10. Section 13(4) of the Securitisation Act empowers the banks and financial institutions, where the borrower fails to discharge his liability in full within the period specified in the notice served upon him under sub-section (2) of Section 13 to take one or more of the following measures:-

a) take possession of the secured assets of the borrower with a right to further transfer the same by way of lease, assignment or sale.

b) take over the management of the business of the borrower, where substantial part of the business is held as security for the debt.

c) appoint a receiver or the manager to manage the secured asset

d) require any person, who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay such money to the secured creditor (banks and financial institutions) itself and obtain a valid discharge to that extent as if the payment had been made by such third party to the borrower. In other words, this is garnishee direction or garnishee measures taken against third party.

11. The remaining sub-sections of Section 13 also deserve to be scanned to understand the scheme of Securitization Act. Sub-section (6) lays down that the secured asset taken over and transferred to the third party by the bank and financial institution, such third party shall be vested with all rights in or in relation to the secured assets as if the transfer had been made by the owner of such secured asset. Notably

this Section does not say that such asset would be transferred to the transferee free from “all encumbrances”. It is only the encumbrance of the bank over the property mortgaged limited to the owners' rights therein, which is discharged by such transfer of secured asset to the third party in a transfer made by the bank or financial institution and whatever rights with or without encumbrance the owner of the property had or the borrower in other words, the same shall stand transferred to the transferee. Sub-section (7) provides for appropriation of the realization made upon such transfer and stipulates that after meeting the costs, charges and expenses for sale, such realization shall be applied for discharge of dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests. Sub-section (8) provides that if dues of banks and financial institutions are paid before the date fixed for sale or transfer of the secured asset, the banks or financial institutions will not proceed further and such secured asset will not be sold or transferred by them. Sub-section (9) provides for cases of joint financing and consent of three-fourth in value of the secured creditors of different banks and financial institutions, if they are joint financers of the borrower, is required for proceeding U/s. 13 (4) of the Act. Proviso to sub-section (9) deals with preferential payments and workmen' dues U/s. 529 and

529 A of the Companies in liquidation. Sub-section (10) provides that where the dues are not fully satisfied with the sale proceeds of the secured assets for the remaining dues, the secured creditor may file an application for recovery before the Debt Recovery Tribunal. Sub-section (11) empowers the secured creditor to proceed against the guarantors or sell the pledged assets without prejudice to their proceedings against the main borrower. Sub-section (12) authorizes one or more officers in that behalf. Sub-section (13) prohibits owner / borrower after receipt of notice under sub-section (2) of Section 13 to transfer the secured asset by way of sale, lease or otherwise in favour of any third party without prior written consent of the secured creditor.

12. Section 17 of the Securitisation Act, 2002 empowers any person (including borrower), aggrieved by any of the measures referred to in sub-section 13(4) of the Act to make an application to the Tribunal and Tribunal has been mandated to decide such objections or application expeditiously within a period of sixty days with a further right to appeal against the order of Tribunal before the Appellate Tribunal.

13. Section 31 of the Act, which was also referred to by the learned counsels at bar lays down that the provisions of this Act shall not apply to contracts relating to movable properties, which is not of a

great importance for deciding the present controversy.

14. Learned counsel for the appellants submitted that inter-se party's rights in the cases of partition, cancellation of sale deed, gift deed, right of pre-emption etc. have to be first decided by the competent Civil Courts before mortgagee's rights under Securitization Act can be allowed to be enforced. They relied upon the following judgments in support of their contentions:-

i) {**2006 (5) SCC page 72}** Indian Bank Vs. ABS Marine Products (P) Limited

ii) {**2005 (2) Bank Cases 127}** Arasa Kumar Vs. Nallammal & Ors. (Madras High Court)

iii) {**AIR 2006 Karnataka 21}** Krishna Vs. Kedar Nath

iv) {**AIR 2004 SC 2371}** Mardia Chemicals Limited Vs. Union of India -para 51

v) **{2000 (9) Supreme Court Cases 272**} Balawwa and another Vs. Hasanabi and others-para 8

vi) **{(1993) 2 Supreme Court Cases 507**} Chiranjilal Shrilal Goenka Vs. Jasjit Singh and Others-para 17

vii) **{(2004) 4 SCC 597}** CIT Vs. Pearl Mech. Engg. & Foundry Works-para 6

15. In Indian Bank Vs. ABS Marine (supra), the Hon'ble Supreme Court while deciding the question as to whether the borrower's suit for damages against the bank for non-release of the sanctioned loan was required to be transferred to Tribunal upon the application filed by the bank or whether such borrower's suit was an independent suit and whether the borrower could be compelled to make his claim against the bank not by way of suit, but only by way of counter claim, the Hon'ble Supreme Court held that making a counter claim in bank's application before Tribunal is not the only remedy but an option available to the defendant borrower. He can also file a separate suit or proceeding before Civil Court or other appropriate forum in respect of his claim against the bank and pursue the same. The Hon'ble Supreme Court observed that it is evident from Section 17 & 18 of the Debt Recovery Act that Civil Courts' jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of it's debts. The jurisdiction of Civil Court is not barred in regard to any suit filed by a borrower or any other person against a bank for any relief.

16. In Krishna Vs. Kedarnath (supra), the Division Bench of Karnataka High Court referring to para 51 of the judgment of Supreme Court in Mardia Chemical's case held that while the bank can enforce it's security interest for realization of it's amount, right of

plaintiffs' to claim partition in the suit scheduled properties, if they prove they are ancestral joint family properties, cannot be deprived of as contended by the bank, which contention was erroneously accepted by the trial court and therefore, the Division Bench of Karnataka High Court held that for adjudication of such claim, the bar under Section 34 of the Act shall not come in the way. While doing so and allowing the appeals, the Division Bench, however, dissolved the status-quo order passed in the suits against the bank in view of exercised bar U/s. 34 of the Act and held that the bank is at liberty to proceed for the recovery of it's amount by taking necessary steps in respect of the mortgaged properties by the debtors under the provisions of the Act vide para 8 of the judgment.

17. Similarly the learned Single Judge of Madras High Court in para 30 of the judgment held as under:-

> "30. Section 9, C.P.C. and bar of jurisdiction created under relevant Sections in respect of the Co-operative Societies Act, Arbitration and Conciliation Act, 1996 and also Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and under Rule 40 of the Income Tax (Certificate Proceedings) Rules, 1962 an also the bar under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 were all considered by this Court and the Apex Court as referred supra and now, it is manifestly clear that the power under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act is not absolute and the same is subject to certain

restrictions, they are:

(1) that the parties, who filed the suit must be a party to the liabilities created in favour of the secured creditor,

(2) the disputes between the parties could be resolved under the provisions of the Act itself,

(3) that if the claim made by the parties is outside the jurisdiction of the Debts Recovery Tribunal or the appellate tribunal or any action taken or to be taken under this Act and also under the Recovery of Debt due to Banks and Financial Institutions Act, 1993 and the dispute raised by the parties cannot be adjudicated by any of the tribunal or authority, created under the act or under any other Act, the right of the parties to approach the Civil Court for appropriate relief cannot be deprived and taken away."

18. It would be also apposite to reproduce para 50 & 51 of the judgment of Supreme Court in Mardia Chemical's case, which was profusely relied upon by the learned counsels for the appellants.

"50. It has also been submitted that an appeal is entertainable before the Debt Recovery Tribunal only after such measures as provided in sub-section (4) of Section13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr. Salve, one of the counsel for respondents that there would be no bar to approach the Civil Court. Therefore, it cannot be said no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the Civil Court is barred in respect of

matters which a Debt Recovery Tribunal or Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say the prohibition covers even matters which can be taken cognizance of by the Debt Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the Civil Court shall have no jurisdiction to entertain any proceeding thereof. The bar of Civil Court thus applies to all such matters which may be taken cognizance of by the Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

51. However, to a very limited extent jurisdiction of the Civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the Civil Court in the cases of English mortgages. We find such a scope having been recognised in the two decisions of the Madras High Court which have been relied upon heavily, by the learned Attorney General as well appearing for the Union of India, namely V. Narasimhachariar (supra) at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22:

"The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: 'Adams vs. Scott,

> (1859) 7 WR (Eng) 213 (249). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Rashbehary Ghose Law of Mortgages, Vol. II, Fourth Eddn., page 784)."

19. *Per contra*, Mr. Garg for the Bank submitted that the recovery of banks' dues cannot be made to wait till such civil suits are decided by the Civil Courts and the special law will over-ride and have precedence and therefore, once the measures are taken U/s. 13 (4) of the Securitization Act or even such measures are to be taken, the Civil Courts cannot entertain any civil suit and grant injunction so as to create hurdles in the way of recovery of banks' dues "in respect of matters falling within the jurisdiction of Debt Recovery Tribunal under both these special enactments." Mr. Garg relied upon the following judgments in support of his submissions:-

i) Allahabad Bank Vs. Canara Bank {**2000 (4) SCC 406}**

ii) Mardia Chemicals Ltd. Vs. Union of India {**AIR 2004 SC 2371**

iii) Transcore Vs. Union of India & Ors. {**I (2007) BC 33 (SC)}**

20. In a recent judgment delivered by Hon'ble Supreme Court on 29.11.2006 in the case of Transcore Vs. Union of India (supra), the Hon'ble Supreme Court while dealing with the question of doctrine of

election between banks approaching Debt Recovery Tribunal under R.D.B. Act, 1993 or taking measures under Securitization Act, 2002 while holding that the doctrine of election did not apply and both the remedies available to bank being taken as one the question of applying doctrine of election did not arise and therefore, the Hon'ble Supreme Court held that there was no need for bank to withdraw it's applications from the D.R.T. before taking measures under Securitization Act for quick enforcement of security and quick recovery of the debt, the observations with regard to over-riding character of these special laws, the Hon'ble Supreme Court in para 22, 23, 24 and 46 held as under:-

> "22. Reading the scheme of Section 13 (2) with Section 13 (4), it is clear that the notice under Section 13 (2) is not a mere show-cause notice and it constitutes an action taken by the bank / FI for the purposes of the NPA Act. Section 13(6) *inter alia* provides that any transfer of secured asset after taking possession or after taking over of management of the business, under Section 13 (4) by the bank / FI shall vest in the transferee all rights in relation to the secured assets as if the transfer has been made by the owner of such secured asset. Therefore, Section 13 (6) *inter alia* provides that once the bank / FI takes possession of the secured asset, then the rights, title and interest in that asset can be dealt with by the bank / FI as if it is the owner of such an asset. In other words, the asset will vest in the bank / FI free of all encumbrances and the secured creditor would be entitled to give a clear title to the transferee in respect thereof.
>
> 23. However, under Section 17(2), the DRT is required to consider whether any of the measures referred to in

Section 13(4) taken by the secured creditor for enforcement of security are in accordance with the provisions of the NPA Act and the Rules made thereunder. If the DRT, after examining the facts and circumstances of the case and the evidence produced by the parties, comes to the conclusion that any of the measures taken under Section 13(4) are not in accordance with the NPA Act, it shall direct the secured creditor to restore the possession / management of the borrower (*vide* Section 17 (3) of NPA Act). On the other hand, after the DRT declares that the recourse taken by the secured creditor under Section 13(4) is in accordance with the provisions of the NPA Act then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to any one or more of the measures specified under Section 13(4) to recovery his secured debt.

24. In our view, Section 17 (4) shows that the secured creditor is free to take recourse to any of the measures under Section 13(4) notwithstanding anything contained in any other law for the time being in force, e.g., for the sake of argument, if in the given case the measures undertaken by the secured creditor under Section 13 (4) comes in conflict with, let us say the provision under the State land revenue law, then notwithstanding such conflict, the provision of Section 13 (4) shall override the local law. This position also stands clarified by Section 35 of the NPA Act which states that the provisions of NPA Act shall override all other laws which are inconsistent with the NPA Act. Section 35 is also important from another angle. As stated above, the NPA Act is not inherently or impliedly inconsistent with the DRT Act in terms of remedies for enforcement of securities. Section 35 gives an overriding effect to the NPA Act with all other laws if such other laws are inconsistent with the NPA Act. As far as the present case is concerned, the remedies are complimentary to each other and, therefore, the doctrine of election has no application to the present case.

46. We have already analysed the scheme of both the Acts. Basically, the NPA Act is enacted to enforce the interest

> in the financial assets which belongs to the bank / FI by virtue of the contract between the parties or by operation of common law principles or by law. The very object of Section 13 of NPA Act is recovery by non adjudicatory process. A secured asset under NPA Act is an asset in which interest is created by the borrower in favour of the bank / FI and on that basis alone the NPA Act seeks to enforce the security interest by non-adjudicatory process. Essentially, the NPA Act deals with the rights of the secured creditor. The NPA Act proceeds on the basis that the debtor has failed not only to repay the debt, but he has also failed to maintain the level of margin and to maintain value of the security at a level is the other obligation of the debtor. It is this other obligation which invites applicability of NPA Act. It is for this reason, that Sections 13 (1) and 13 (2) of the NPA Act proceeds on the basis that security interest in the bank / FI; needs to be enforced expeditiously without the intervention of the Court / Tribunal; that liability of the borrower has accrued and on account of default in repayment, the account of the borrower in the books of the bank has become non-performing. For the above reasons, NPA Act states that the enforcement could take place by non-adjudicatory process and that the said act removes all fetters under the above circumstances on the rights of the secured creditor.

21. In an earlier case in Allahabad Bank Vs. Canara Bank (supra), while dealing with the provisions of Companies Act and R.D.B. Act, 1993 held that on the principle of '*Generalia Specialibus non derogant*' in case of conflict between two special laws held that the later one would prevail and accordingly the Hon'ble Supreme Court held that for a purposive construction, the provisions of R.D.B. Act would prevail and the Recovery Officers authorized by the D.R.T.

need not obtain the leave of the Company Court for initiating such proceedings notwithstanding the provisions of Section 442, 537 and 446 of the Companies Act. In para 21 of the said judgment, the Court held as under:-

> "21. In our opinion, the jurisdiction of the Tribunal in regard to *adjudication* is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) [formerly under Section 19 (7)] to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to *adjudicate* the liability of the defendant and then it has to issue a certificate under Section 19 (22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to *adjudicate* upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution.) This is the effect of Sections 17 and 18 of the Act.

22. Having carefully analyzed the various provisions of law and relevant case laws, this Court is of the opinion that to give effect to special and over-riding law where the intention of the legislature is clear to curtail and oust the jurisdiction of Civil Courts, this appears to be beyond the pale of doubt that once measures U/s. 13 (4) of the Securitization Act are taken after the notice period of 60 days U/s. 13

(2) is over, the entertainment and pendency of civil suits nor any injunction of Civil Court should be allowed to encroach, bar and restrain the measures of recovery U/s. 13 (4) of the Act, but at the same time right to decide inter-party rights in civil suits by Civil Courts cannot be stopped altogether. The way out, therefore, appears to be that let such civil suits proceed inter parties without encroachment or bar against the banks and financial institutions to proceed under such special laws and whenever such inter party's rights are adjudicated and determined by the Civil Courts and such decree becomes final, the party claiming rights under such decree in his favour will follow the suit property and claim back the same as such or his share in that, as the case may be and if in the mean time the form of the property has changed, to claim damages in the alternative from the person in whose ownership and possession such property rests and vests at that point of time. In other words while the banks and financial institutions who have initiated measures for recovery under these special enactments cannot be dragged into such civil suits and made subject to injunctions by the Civil Courts, at the same time, the right of Civil Courts to decide inter party civil rights is not prohibited. The chances of frivolous and collusive suits to thwart the banks to realize their dues cannot be ruled out. Therefore, once the banks or the financial institutions approach the Civil Court where

such civil suits are filed, showing that they have initiated measures under these special enactments, the Civil Courts must delete them from the array of respondents and make it clear that no injunction granted by the Court shall affect their right to proceed under such special laws.

23. However, one exception to the aforesaid proposition is required to be carved out and that is in case of partition suits filed for partition of ancestral joint hindu family properties. Since a right in the HUF property accrues to or vests in a co-parcener by birth, without determination of rights of all the co-parceners in a partition, allowing the bank or financial institution to take away such HUF property, which might have been mortgaged by one of the co-parceners, will irreparably and irretrievably prejudice the interests of other co-parceners, who may not be even guarantors or borrowers for such loan transaction and may not have privy of contract with the bank. This class of suits stand on a different footing from other suits in which third parties may claim right over the mortgaged property like cancellation of sale deed, gift deed or pre-emption rights etc., which rights are acquired under contracts or transactions and are different from the rights acquired by birth in the family in cases of joint H.U.F. property. The rational behind this exception can be found even in the two judgments cited by the learned counsels for the appellants namely

Division Bench judgment of Karnataka High Court in Krishna Vs. Kedar Nath (supra) and Madras High Court judgment in Arasa Kumar Vs. Nallammal & Ors. discussed in para 16 & 17 above. Thus where the partition suit, in respect of ancestral property belonging to an HUF is either pending or has been filed even after bank has initiated steps Us/. 13 (4) of the Securitization Act, the other co-parceners can claim injunction against the Bank or financial institutions insofar as their share in the property is concerned and since the Act does not envisages passing any enlarged total than what the borrower owner had in the mortgaged property, in such cases even the Bank can claim partition of the joint HUF property and can enforce it's security to the extent of share of the borrower owner in such joint HUF property. Barring this exception, the bar U/s. 34 of the Act would apply to Civil Court's power to grant injunction as discussed elsewhere in this judgment.

24. Another aspect which has to be taken note of is that borrowers and other third parties who have their genuine claim in the suit property which is also made subject matter of the mortgage by the borrower with the banks or financial institutions cannot be left remediless. Fortunately these special laws enacted by the Parliament take care of that situation. Not only after the judgment of Hon'ble Supreme Court in Mardia Chemicals case, the Securitization Act has

been amended by the “Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004) to give such a right to any person including third parties as well as borrowers aggrieved by any of the measures referred to in Section 13 (4) of the Securitization Act to make an application to the Tribunal and the Tribunal has been mandated to decide the same expeditiously within 60 days of making such application as per Section 13 (5) of the Act, but Section 17 (4) of the Securitization Act itself requires the Tribunal to declare that the recourse taken by the secured creditor U/s. 13 (4) of the Act is in accordance with the provisions of the said Act and Rules made thereunder. Thus such third parties or borrowers can bring it to the notice of the Tribunal by making application under Section 17 of the Act, where banks and financial institutions are necessarily represented and are available raising their objections or at least bringing it to the notice of the Tribunal that the mortgaged property or the security is subject to so and so litigation or rights of the third parties. It would be for the Tribunal, it goes without saying, to decide such objections by way of a summary trial as is considered appropriate by it and then decide whether to allow Bank or financial institution whether to proceed further with the measures U/s. 13 (4) of the Act or under R.D.B. Act at all or not and also to decide whether a note to this effect should be given in the Notification &

Advertisement for sale, auction etc. and in conveyance deed, by which the bank or the financial institution would transfer the borrower's right to third parties in exercise of it's powers under these special enactments. If a civil suit between the parties is already pending in this regard, it would be for the parties to place such material and evidence on the record of the Tribunal in one instance to satisfy the Tribunal that at least a cognizance of such pending litigation deserves to be taken by it and a note to that effect is made in the notification, advertisement, conveyance deed as aforesaid. Upon such direction of the Tribunal the banks and financial institutions will abide by the same. If however, on the contrary, the Tribunal arrives at a conclusion that such civil suits are collusive, fraudulent or not genuine and have been filed with a view to defeat the measures taken U/s. 13 (4) of the Act and prima-facie on the basis of material placed before it, the borrowers' interest in the suit property cannot be said to be encumbered in any manner by such civil suits, such Tribunal can decide not to direct the banks or financial institutions to make any note in the notification, advertisement & conveyance deed in this regard, and give them the freedom to proceed further in accordance with the law under special enactments.

25. Be that as it may, since these non-obstante provisions made in the special enactments are intended to pass only owner's interest in

the mortgaged property as such and discharge to the borrower by the bank is also to that extent, as is evident from the provisions of Section 13 (6) of the Securitization Act, which says “as if the transfer had been made by the owner of such secured asset” and since in law, nobody can pass a better title than what one has, naturally, the owner of the mortgaged property also cannot pass on a better title and it is always subject to civil rights of the other parties, who claim their right, title or interest over the said property in whole or in part. But notwithstanding such right, title or interest, the process of recovery of bank dues under these special laws cannot be injuncted, prohibited, jeopardized or curtailed.

26. In the light of what has been said above, turning back to the facts of the present case where in a suit claiming right of pre-emption over the mortgaged property was filed which is undoubled a weak right as held by Hon'ble Supreme Court in AIR 1971 SC 1055 (Indira Bai Vs. Nand Kishore) and was dismissed and against which connected appeal is pending in this Court namely First Appeal No. 127/2001 and after initiation of measures U/s. 13 (4) of the Act another suit for declaration and permanent injunction came to be filed by the same plaintiffs, which was rejected on an application under Order 7 Rule 11 by the trial court by the impugned order dated 30.1.2006, this Court is of the opinion that while the suit can be

allowed to be tried by the trial court, inter-se between the parties and contesting defendants, the same cannot be allowed to continue and proceed against the State Bank of Bikaner and Jaipur. Therefore, partly allowing the present appeal and restoring back the suit to the trial court, it is directed that the defendant Nos. 3 & 4-State Bank of Bikaner and Jaipur shall stand deleted from the array of defendants and no injunction passed in the civil suit would affect the bank in any manner. If the plaintiffs-appellants succeed in the suit claiming his right of pre-emption, they would be entitled to follow the suit property in the hands of the successor-in-title whenever such decree if it comes to be passed in their favour becomes final or claim damages in the alternative from such successor-in-title. For making a note in the conveyance deed, if any, executed by the bank in favour of any third party, the plaintiffs-appellants would be free to approach the Debt Recovery Tribunal raising their objection and the Debt Recovery Tribunal shall deal with such objection as indicated above.

27. The up-shot of the above discussions is that following guidelines and directions emerge:-

i) That while Civil Courts still remain appropriate forums and can continue to decide inter party civil rights in the cases involving civil rights of the parties like in the cases of partition, cancellation of sale deed, gift deed, right of pre-emption, redemption of mortgage etc and the bar contained in Section 34 of the Securitization Act is not absolute and does not debar Civil Courts to entertain such suits, however, no suit or injunction in any Civil Court can be allowed to prohibit and debar the measures taken by banks and financial institutions under Securitization Act, 2002 or under R.D.B. Act, 1993, except as specified below in para (ii).

ii) In cases of partition suits of ancestral property owned by a Hindu Undivided Family which has been mortgaged by one or more of the co-parceners, without other coparceners being guarantors or

ii) That the cut off date excluding the jurisdiction of the Civil Court in respect of measures specified U/s. 13 (4) of the Securitization Act is the date when such measures are taken after expiry of notice period U/s. 13 (2) of the

Act and after such cut off date no civil suit or injunction barring or prohibiting the right of the banks and financial institutions with respect to measures U/s. 13 (4) of the Act can adversely affect the bank nor such injunction would be binding on the bank or financial institution.

iii) From the said cut off date if any such third party has a pending claim or intends to claim his right, title or interest over the property, which is security of the bank or financial institution, the remedy opens for him before the Debt Recovery Tribunal U/s. 17(1) of the R.D.B. Act and he can raise his objection or bring it to the notice of the Tribunal the fact of pendency of such civil suit and thereafter the Tribunal shall decide such objection within 60 days, as stipulated in Section 13 (5) of the Act and hold either way as to whether a note to the effect of pending litigation has to be made by the bank or financial institution concerned in the conveyance deed, if any, executed in exercise of their powers U/s. 13 (4) of the Act in favour of any third party.

22. In case upon adjudication of right, title or interest of any third party in a civil suit is decreed in his favour, such party upon such decree becoming final, shall be entitled to follow the whole or the

part of the property, which form security of the bank or the financial institution concerned and claim back either the suit property from the successor-in-title or to claim damages in the alternative for the same.

23. If in such civil suits filed for determination of civil rights between the parties including the borrower, who has mortgaged the suit property in whole or in part with the bank or financial institution, who have initiated steps U/s. 13 (4) of the Act, the banks and financial institutions would be free to apply to the competent Civil Court and upon such application the bank or financial institution shall be deleted from the array of defendants and no injunction granted by the Civil Court would bind the bank or financial institution in respect of measures taken U/s. 13 (4) of the Act.

24. In view of above, the questions framed are answered in the following terms:-

i) That after enactment of Securitization Act w.e.f. 17.12.2002, the Civil Courts can continue to decide civil suits filed U/s. 9 of CPC to adjudicate the inter-se rights between the third parties including the borrower of such banks and financial institutions, but no such suit can be entertained nor any such injunction can be granted after the cut off date of initiation of measures U/s. 13(4) of the Securitization Act.

ii) After the cut off date of initiation of measures U/s. 13 (4) of the Act, no Civil Court can grant any injunction against the banks and financial institutions after they have initiated steps U/s. 13(4) of the Act.

25. With these observations, this appeal is partly allowed with no order as to costs.

(Dr. Vineet Kothari), J.

DK/-